

Court the guardian of an infant defendant, whether appointed by a special order, or under a commission, has always been considered and treated as a guardian *ad litem*, appointed for the purpose of answering and defending the suit, and whose duty it is not only to answer the bill, but to make the best defence he can according to the circumstances, for the benefit of his ward; and this appears to have been recognized as the duty of such a guardian by our Acts * of Assembly in relation to this matter. 1785, ch. 72, s. 1; 1797, ch. 114, s. 5. It appears to have been formerly usual, **553** where the infant resided within the State, either to have him brought into Court by the messenger, if able to attend, and a guardian assigned him, by whom he was to answer; *Eyles v. Le Gros*, 9 Ves. 12; *Hill v. Smith*, 1 Mad. Rep. 290; or to issue a commission to four, or a plurality of persons, any three or two of whom were authorized to appoint a guardian and take his answer by such guardian in exact conformity to the English practice. *Gist v. Gist*, 3d November, 1798, *Chan. Proc. lib. S. H. H. No. 7, fol. 48, 52*; *Merriveather v. Hood*, MS. June, 1800; *McCoy v. Springer*, MS. October, 1800.

If it appears upon the face of the proceedings, or upon enquiry into the fact, that the defendant is an infant, the Court cannot proceed without a guardian to answer and defend for him; *Roberts v. Stanton*, 2 Mun. 133; and for that purpose the Court may either have him brought before it, or allow a commission to be issued, which is now much the more usual course; for, although there can be no doubt of the power of the Court to have an infant defendant brought in from any part of the State; *Dulany v. Frazer*, MS. per HANSON, Chancellor, 19th November, 1792;(f) yet it is rarely found to be convenient, or necessary to do so merely for the purpose of

payment of his debts. The bill stated, that Mary E. Barnes, the heir of Richard her father, was an infant, and prayed a subpoena against her as well as against the administrator; a subpoena was issued accordingly, and afterwards a commission was issued in the usual way to take the answer of the infant, under which her answer was returned and filed on the 24th of February, 1814.

KILTY, C., 19th March, 1814.—A motion was made by counsel for the appointment of a guardian to defend for the infant Mary Elizabeth Barnes, according to the practice in England. The Chancellor is not apprised of its having been done in this State; but such a practice appearing to be equitable and probably necessary, it is hereby ordered, that John Barnes, of Charles County, be and he is hereby appointed guardian for the said Mary Elizabeth Barnes, to defend on her behalf the said suit.

(f) GRIFFITH v. DAVIS.—ROGERS, C., 1789.—On motion of complainant's counsel, ordered that the messenger bring into Court the body of Henrietta Davis, the infant, on the fourth day of next Court, she being heretofore returned by the sheriff of Montgomery County, summoned to appear in this cause, and attachment having been awarded on her failure to appear on the said summons.—*Chan. Proc. lib. S. H. H. let. C, fol. 61.*